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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1960

No. 547

STATE OF ALABAMA,
Petitioner,
v
TRANSCONTINENTAL GAS PIPE LINE CORPORATION,
a Corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of Alabama.

MacDONALD GALLION,
Attorney General for Alabama

GUY SPARKS,
Executive Assistant to the
Commissioner of Revenue,
and Special Assistant
Attorney General

WILLIAM H. BURTON,
Counsel, Revenue Department,
and Assistant Attorney General

Counsel for the State of Alabama,
Petitioner

Index

	Page
Petition for Writ of Certiorari	1
Citations to opinion below	1
Jurisdiction	2
Questions presented	2
Statutes involved	3
Statement	3
Reasons for granting the writ	7
Decisions under the Federal Natural Gas Act	16
Conclusion	23
Proof of Service	24
Appendix "A"	26
Appendix "B"	39
Appendix "C"	40
Appendix "D"	42
Appendix "E"	43
Appendix "F"	68
Appendix "G"	69
Appendix "H"	70

Cases Cited

Berkshire Fine Spinning Associates v. City of New York, 80 S.Ct. 86 (1959), dismissing for want of a Federal question 157 N.E. 2d 614	16
Caskey Baking Company v. Commonwealth of Virginia, 313 U.S. 117, 61 S.Ct. 881	10

Colorado Interstate Gas Company v. Federal Power Commission, 324 U.S. 581, 585, 65 S.Ct. 829 . . . . . 18, 22

Coyerdale, Sheriff, v. Arkansas-Louisiana Pipe Line Company, 303 U.S. 604, 58 S.Ct. 736 13

E. T. & W. N. C. Transportation Company v. Currie, 359 U.S. 604, 79 S.Ct. 602, Affirming 248 N.C. 560; 104 S.E. 2d 403 13

East Ohio Gas Company v. Tax Commission, 283 U.S. 465, 51 S.Ct. 499 . . . . . 10, 20

Field Enterprises, Inc. v. State of Washington, 352 U.S. 806, 77 S.Ct. 55, 1 L.Ed. 2d 39, Affirming 289 P.2d 1010, 1012 15

Hollingsworth & Whitney Company v. State, 241 Ala. 96, 1 So.2d 387 15

International Shoe Company v. Washington, 326 U.S. 310, 66 S.Ct. 154 . . . . . 13, 18

Kansas-Nebraska Natural Gas Company v. City of St. Edwards, Neb., (8th Cir. 1956) 234 F.2d 436, 440, 441 . 19

McGoldrick v. Berwind-White Mining Company, 308 U.S. 33, 60 S.Ct. 388, 128 A.L.R. 876 . . . . . 10, 11, 16

Memphis Natural Gas Company v. Stone, 335 U.S. 80, 68 S.Ct. 1475 . . . . . 11, 12, 15, 16, 17, 21

Missouri v. Kansas Natural Gas Company, 265 U.S. 298, 44 S.Ct. 544 . . . . . 10, 16

Northwestern States Portland Cement Company v. State of Minnesota, 358 U.S. 450, 79 S.Ct. 357 . . . . 13, 14, 15, 17

Ozark Pipe Line Corporation v. Monier, 266 U.S. 555, 45 S.Ct. 184 . . . . . 8, 9

Panhandle Eastern Pipe Line v. Federal Power Commission (Court of Appeals, 3rd Cir. - 1956) 232 F.2d 467, 471, 473 10

Panhandle Eastern Pipe Line Service v. Mich. Public Service Commission (1951), 341 U.S. 329, 71 S.Ct. 777 19

Panhandle Eastern Pipe Line Company v. Public Service Commission of Indiana, 332 U.S. 507, 68 S.Ct. 190 . . . . . 16, 18, 19, 20, 22

Pennsylvania Gas Company v. Public Service Commission, 252 U.S. 23, 40 S.Ct. 279 19

Sanford Service Company v. City of Andalusia, 256 Ala. 507, 55 So.2d 856 11

Scripto, Inc. v. Carson 362 U.S. 207, 80 S.Ct. 619 . . . . 13, 14, 15, 17, 18

Southern Natural Gas Company v. State of Alabama, 301 U.S. 148, 57 S.Ct. 696 . . . . . 10, 13, 16, 21

Spector Motor Service v. O'Connor, 340 U.S. 602, 71 S.Ct. 508 . . . . . 8, 9, 12

State of Alabama v. Plantation Pipe Line Company, 265 Ala. 69, 89 So.2d 549, 561, Cert. Den. 348 U.S. 943, 1 L.Ed. 2d 237 . . . . . 3, 4, 8, 9, 14, 15

State of North Dakota v. Federal Power Commission, 247 Fed. 2d 173 . . . . . 18, 19, 21, 22

State Tax Commission of Mississippi v. Interstate Gas Company, 284 U.S. 41, 52 S.Ct. 62 21

Stone v. Interstate Natural Gas Company (C. of A. 5th Cir.) 103 F.2d 544, 549, Aff'd. per curiam in Interstate Natural Gas Company v. Stone, 308 U.S. 522, 60 S.Ct. 292 21

West Publishing Company v. McColgan, 328 U.S. 823, 66 S.Ct. 619 12

Western Livestock Company v. Bureau of Revenue, 303 U.S. 250, 254, 58 S.Ct. 546 . . . . . 13, 15

Williams v. Stockham Valves & Fittings, Inc., 358 U.S. 450, 79 S.Ct. 357 12

Wisconsin v. J. C. Penney Company, 311 U.S. 435, 61 S.Ct. 246 . . . . . 13, 14

Statutes and Laws Cited

Code of Alabama 1940, Title 51, Sections 25 and 347, as amended 15

Code of Alabama 1940, Title 51, Section 140 4

Code of Alabama 1940, Title 51, Section 348, as amended 2, 3, 4

Federal Natural Gas Act, 15 U.S.C., 717-717W 2, 5, 16, 17, 18, 19

Reference Works

Powell's Notes, 58 Harvard Law Review 1072, 1082, and 1084 . . . . . 11, 18, 19

Constitutions Cited

Constitution of Alabama 1901, Article 12, Section 232 . . 3, 4

Constitution of the United States, Article 1, Section 8, Clause 3 . . . . . 2, 3

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No. .....

STATE OF ALABAMA,
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v

TRANSCONTINENTAL GAS PIPE LINE CORPORATION,
a Corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of Alabama.

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Alabama entered in the above-styled cause on January 14, 1960, (R. 280-293), rehearing denied on September 15, 1960 (R. 294, 298).

Citations to Opinion Below

The judgment of the Circuit Court of Montgomery County, Alabama, in Equity (R. 257-271, Appendix "E"), is unreported. The judgment and opinion of the Supreme Court of Alabama entered on January 14, 1960 (R. 280-293, 295), and rehearing denied on September 15, 1960 (R. 294, 298), is reported in 122 So.2d 281. (Printed in Appendix "A," "B," "C," and "D".)

Jurisdiction

The judgment of the Supreme Court of Alabama was entered on January 14, 1960 (R. 280-293, 295). A timely application for rehearing was filed within fifteen days and on January 29, 1960 (R. 296), and rehearing was denied on September 15, 1960 (R. 294, 298). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257 (3), in that as applied to the Respondent, a natural gas company, engaged in selling and delivering natural gas to customers in Alabama both for distribution and for direct consumption, the validity of a state statute (the Alabama foreign corporation franchise tax levied under Title 51, Section 348, as amended, Code of Alabama 1940 (Appendix "F"), has been drawn in question on the grounds that as so applied it is unconstitutional as being repugnant to the provisions of Article 1, Section 8, Clause 3, of the Constitution of the United States.

Questions Presented

1. Was the Respondent a foreign corporation, and a natural gas company within the meaning of the Federal Natural Gas Act, 15 U. S. C. 717-717W, engaged in 1956 in selling and delivering (both for distribution and in some instances for direct consumption) to customers in Alabama natural gas which was transported from without the State engaged solely in interstate commerce in Alabama during said year?

2. Was the Respondent in selling and delivering natural gas to customers in this State under such circumstances engaged solely in interstate commerce in this State so as to prohibit and preclude the State under the Commerce Clause of the

Federal Constitution from applying to the Respondent its foreign corporation franchise tax under Title 51, Section 348, as amended, Code of Alabama 1940, which is levied on the "doing of business in this state"[1] and measured by and confined to solely the amount of capital employed by such a corporation in Alabama?

Statutes Involved

The applicable provisions of the Commerce Clause of the Federal Constitution, namely, Article 1, Section 8, Clause 3, are set out in Appendix "H". The levying provisions of the Alabama foreign corporation franchise tax are contained in Title 51, Section 348, as amended, Code of Alabama 1940, which statute will be found in its entirety in Appendix "F". The provisions of the Alabama Constitution of 1901 which relates to the levy of a franchise tax on foreign corporations, are contained in the Constitution of Alabama of 1901, Article 12, Section 232 and are set forth herein as Appendix "G".

Statement

This cause originated as an appeal taken on March 27, 1958 (R. 2-3; 5-6) by the Respondent, Transcontinental Gas Pipe Line Corporation, to the Circuit Court of Montgomery County, Alabama, in Equity, under the provisions of Title 51, Section 140, Code of Alabama 1940 from a final assessment of Alabama foreign corporation franchise tax for the calendar year 1956. This assessment (R. 44-45) was made in behalf of the State by the State Department of Revenue and was in the total amount

[1] *State of Alabama v. Plantation Pipe Line Company*, 265 Ala. 69, 89 So.2d 549.